

A Theory of Copyright Authorship

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The constitutional basis for copyright law involves establishing rights in “Authors.” The current copyright statute grants copyrights to “original works of authorship.” Yet despite the centrality of authorship to copyright law, there has been little attempt to develop a coherent theory of what authorship means. This paper answers the question: What is it that authors do? The answer emerges from aesthetic theory. Authors express ideas, feelings, emotions, facts, etc. And it is the manner of their expression that constitutes copyrightable authorship. On this view, authorship is distinct both from originality and from creativity. It is a separate, independent requirement for copyrightability. This paper analyzes the role of authorial expression in copyright theory, and it illuminates debates about a variety of issues, including the copyright status of photographs, databases, computer software, and appropriation art.